

1 AMY L. DOBBERTEN
Assistant Deputy Director, Bar No. 155111
2 DEBRA L. DENTON
Assistant Chief Counsel, Bar No. 164482
3 PATRICIA STURDEVANT
Senior Counsel, Bar No. 54681
4 SERGIO J. DIAZ
Senior Counsel, Bar No. 138695
5 CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
6 Office of Enforcement
980 Ninth Street, Suite 500
7 Sacramento, CA 95814-7243
Telephone: (916) 323-0435
8 Facsimile: (916) 323-0438

9 Attorneys for Complainant

FILED
JUL 15 2005

DEPARTMENT OF MANAGED HEALTH CARE

By  Filing Clerk

10
11 BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE
12 OF THE STATE OF CALIFORNIA

13 IN THE MATTER OF:

14 THE CAPPELLA GROUP, INC.
15 D/B/A CARE ENTRÉE

16 Respondent.

) DMHC No.: 04-312

) OAH No.:

) **CEASE AND DESIST ORDER AND
NOTICE OF RIGHT TO HEARING**

) (Health and Safety Code sections 1349,
1360, 1386, 1391, and 1395;
California Code of Regulations, title 28,
section 1300.67.4(a)(3)(A))

19
20 **TO: THE CAPPELLA GROUP, INC., D/B/A CARE ENTRÉE**
21 **2040 NORTH HIGHWAY 360**
22 **GRAND PRAIRIE, TX 75050**

23 The Director of the Department of Managed Health Care, by and through her
24 designee, Assistant Deputy Director Amy L. Dobberten, after investigation, determines as
25 follows:

26 **I.**

27 **INTRODUCTORY STATEMENT**

- 28 1. California Health and Safety Code section 1349 requires certain entities

arranging for health-care services to first obtain a license from the California Department of Managed Health Care. Respondent is acting as a health care service plan, arranging for the provision of health care services and accepting periodic payments. Accordingly, it is operating as a health care service plan as defined in Health and Safety Code section 1345(f)(1), and is required to obtain a license under the Knox-Keene Health Care Service Plan Act of 1975, as amended, (“Knox-Keene Act”). Respondent’s failure to obtain a license subjects it to the enforcement powers of the Department of Managed Health Care.

2. Disregarding California law, the out-of-state entity set forth above is soliciting California residents for purposes of selling health care services without a license, misleading California consumers and misrepresenting its product. It purports to provide a discount on health care services, but no discounts are available unless the member establishes an escrow account and has sufficient funds in the escrow account with an affiliated company of the Respondent to pay for the medical service on or before said service is rendered.

3. Therefore, the Department of Managed Health Care, by the Order below, hereby directs Respondent to cease and desist from any further unauthorized, deceptive and unlawful activity in the State of California.

II.

STATUTORY AUTHORITY

4. The Director of the Department of Managed Health Care is vested with the responsibility to administer and enforce the Knox-Keene Health Care Service Plan Act of 1975, as amended, ("Knox-Keene Act"), Health and Safety Code section 1340, *et seq.* The intent and purpose of the Knox-Keene Act is to promote the delivery and quality of health and medical care to the people of California who enroll in a health care service plan by, among other things: "Prosecuting malefactors who make fraudulent solicitation or who use deceptive methods, misrepresentations, or practices, which are inimical to the general purpose of enabling a rational choice for the consumer public." (Health and Safety Code sections 1341 and 1342(c).)

///

1 5. Health and Safety Code section 1345(f)(1) defines a health care service
2 plan to mean:

3 Any person who undertakes to arrange for the provision of
4 health care services to subscribers or enrollees or to reimburse
5 any part of the cost for those services, in return for a prepaid
or periodic charge paid by or on behalf of the subscribers or
enrollees.

6 6. The Legislature has plainly evidenced its intent as to the application of the
7 Knox-Keene Act in Health and Safety Code section 1399.5, which provides:

8 It is the intent of the Legislature that the provisions of this
9 chapter shall be applicable to any private or public entity or
10 political subdivision which, in return for a prepaid or periodic
charge paid by or on behalf of a subscriber or enrollee,
11 provides, administers or otherwise arranges for the provision
of health care services....

12 7. Any person conducting business as a health care service plan is required to
13 have a license under the Knox-Keene Act pursuant to Health and Safety Code section 1349,
14 which provides:

15 It is unlawful for any person to engage in business as a plan in
16 this state or to receive advance or periodic consideration in
connection with a plan from or on behalf of persons in this
17 state unless such person has first secured from the director a
license, then in effect, as a plan or unless such person is
18 exempted by the provisions of Section 1343 or a rule adopted
thereunder. A person licensed pursuant to this chapter need
19 not be licensed pursuant to the Insurance Code to operate a
health care service plan or specialized health care service plan
20 unless the plan is operated by an insurer, in which case the
insurer shall also be licensed by the Insurance Commissioner.

21 8. Untrue and misleading advertising and solicitation, both by affirmative
22 misstatement and by omission of important information, is prohibited by Health and Safety
23 Code section 1360, which provides:

24 (a) No plan, solicitor, solicitor firm, or representative shall
25 use or permit the use of any advertising or solicitation which
is untrue or misleading, or any form of evidence of coverage
26 which is deceptive. For purposes of this article:

- 27 1. A written or printed statement or item of
28 information shall be deemed untrue if it does not
conform to fact in any respect which is, or may be
significant to an enrollee or subscriber, or potential

1 enrollee or subscriber in a plan.

- 2
3 2. A written or printed statement or item of
4 information shall be deemed misleading whether or
5 not it may be literally true, if, in the total context in
6 which the statement is made or such item of
7 information is communicated, such statement or
8 item of information may be understood by a person
not possessing special knowledge regarding health
care coverage, as indicating any benefit or
advantage, or the absence of any exclusion,
limitation, or disadvantage of possible significance
to any enrollee, or potential enrollee or subscriber,
in a plan, and such is not the case.

9 * * *

- 10 (b) No plan, or solicitor, or representative shall use or
11 permit the use of any verbal statement which is untrue,
12 misleading, or deceptive or make any representations
13 about coverage offered by the plan or its cost that does
not conform to fact. All verbal statements are to be
held to the same standards as those for printed matter
provided in subdivision (a).

14 9. California Code of Regulations, title 28, section 1300.67.4(a)(3)(A) prohibits
15 plans from offering illusory benefits. It provides: "A benefit afforded by the contract shall
16 not be subject to any limitation, exclusion, exception, reduction, deductible, or co-payment,
17 which renders the benefit illusory."

18 10. Health and Safety Code section 1386(b)(7) specifically proscribes conduct that
19 constitutes fraud or dishonest dealing or unfair competition, as defined by section 17200 of
20 the Business and Professions Code.

21 11. Health and Safety Code section 1395 further requires that:

22 ...Any price advertisement shall be exact, without the use of
23 such phrases as "as low as," "and up," "lowest prices" or
24 words or phrases of similar import. ... Price advertising shall
25 not be fraudulent, deceitful, or misleading, nor contain any
offers of discounts, premiums, gifts, or bait of similar nature.
In connection with price advertising, the price for each
product or service shall be clearly identifiable.

26 12. The Director is empowered to enforce compliance with the Knox-Keene Act
27 by Health and Safety Code section 1391 (a)(1), which provides in relevant part:

28 The director may issue an order directing a plan, solicitor
firm, or any representative thereof, a solicitor, or any other

1 person to cease and desist from engaging in any act or
2 practice in violation of the provisions of this chapter, any rule
3 adopted pursuant to this chapter, or any order issued by the
4 director pursuant to this chapter.

5 III.

6 VIOLATIONS OF LAW

7 13. Respondent is undertaking to arrange for the provision of health care services
8 to members, either directly or through arrangements with others, in return for a periodic
9 charge paid by the members, within the meaning of Health and Safety Code section
10 1345(f)(1). Additionally, Respondent is providing, administering or otherwise arranging for
11 the provision of health care services within the meaning of Health and Safety Code section
12 1399.5 by its twenty-four (24) hour health hotline. (Exhibit A attached hereto.) Respondent,
13 therefore, is engaging in business as a health care service plan in the state of California and
14 receiving advance and periodic consideration in connection with a plan from, or on behalf of,
15 persons in California, without having first secured a license from the California Department
16 of Managed Health Care. This conduct violates Health and Safety Code section 1349.

17 14. Respondent's advertising and solicitation practices offer discounts from
18 doctors, dentists, and hospitals, but those discounts are unavailable unless members establish
19 and sufficiently fund an escrow account with Foresight TPA, an affiliated company of
20 Respondent. Respondent refuses to provide discounts for the medical service provided
21 unless members have sufficient funds in the escrow account before or at the time the medical
22 service is rendered. (Exhibits B, C and D attached hereto.)

23 15. Although Respondent advertises that the funds in the escrow account belong
24 to members, no interest is paid to members for money deposited in the escrow account unless
25 the balance equals or exceeds \$1,500.00. A thirty (30) day waiting period is required before
26 members are allowed to withdraw funds from the escrow account. Members are encouraged
27 to fund the escrow account with a minimum of \$100.00 and a recurring minimum monthly
28 deposit of \$25.00 or more; Respondent imposes an additional \$50.00 charge for accounts
created shortly before hospitalization is required. Respondent requires those who wish to

1 enroll to preauthorize Respondent's affiliated company Foresight TPA to electronically and
2 automatically withdraw periodic payments from members' checking or credit card account;
3 Respondent only accepts payments from members via automatic withdrawals unless
4 members make annual payments. (Exhibits E and F attached hereto.)

5 16. Respondent will not issue members a Foresight TPA identification card
6 authorizing them to receive treatment from a doctor, hospital, laboratory radiologist, MRI
7 facility, or other ancillary service unless members establish and regularly fund an escrow
8 account with Foresight TPA, an affiliated company of Respondent. These escrow funds are
9 to be used to pay for members' medical needs and for unpaid membership fees.

10 17. The advertising and solicitation described above in paragraphs 13 through 16
11 are misleading because they promise unrestricted access to in-network providers of the
12 member's choosing; however, such access is limited to members who establish, and
13 sufficiently fund, an escrow account to pay for the medical service received before or at the
14 time the service is rendered. These practices violate Health and Safety Code sections
15 1360(a)(1), (2) and (b). (Exhibits B, D and F attached hereto.)

16 18. Furthermore, the advertising and solicitation practices described above in
17 paragraphs 13 through 16 render the benefit of unrestricted access to in-network providers of
18 the member's choosing illusory because it is limited to members who sufficiently fund an
19 escrow account to pay for the medical service received before or at the time the service is
20 rendered. This significant limitation is not conspicuously advertised and, therefore, renders
21 the purported benefit illusory. These practices also violate California Code of Regulations,
22 title 28, section 1300.67.4(a)(3)(A).

23 19. Respondent's advertising and solicitations are misleading in violation of
24 section 1360(a)(2) and (b) by failing to mention, or to clearly and conspicuously disclose,
25 that no discounts are available and payment in full for medical services is required for
26 members who fail to adequately fund the escrow account that is controlled by Foresight
27 TPA. This limitation or disadvantage that discounts are available only when escrow
28 accounts have adequate funds is of significance to members, particularly for the low-income

population, who are forced to make deposits in advance sufficient to cover the cost of medical services in full, before or at the time the service is rendered.

20. Respondent's advertising and solicitation practices are further misleading in violation of section 1360(a)(2) and (b) by using language typically associated with insurance coverage, by offering its health care product in conjunction with " \$2,000 Excess Accident Medical Coverage" and "3-Month Membership Fee Waiver for Involuntary Unemployment." In addition, Respondent promotes no limitations on program usage and no pre-existing health care restrictions. The use of language that promotes no limitations on program usage and no pre-existing health care conditions is generally associated with insurance coverage and is likely to mislead consumers to believe that by enrolling in this product they are purchasing health, life, accident or unemployment insurance. (Exhibits G and H attached hereto.)

21. Despite the fact that Respondent advertises a thirty (30) day money-back guarantee, it insists that the enrollment fee is non-refundable. These practices violate Health and Safety Code sections 1360(a)(1) and (b).

22. Respondent's conduct described herein constitutes fraud, or dishonest dealing, or unfair competition, as defined by section 17200 of the Business and Professions Code, in violation of Health and Safety Code section 1386(b)(7).

23. Respondent is engaging in prohibited inexact price advertising using terms such as "up to," in fraudulent, deceitful, or misleading advertising of non-existent discounts, and of offering insurance policies as premiums, gifts or bait to persuade consumers to enroll as members, in violation of Health and Safety Code section 1395. (Exhibits I, J, and K attached hereto.)

IV.

CEASE AND DESIST ORDER

Based on the foregoing, the Director finds that Respondent has violated Health and Safety Code sections 1349; 1360(a)(1), (a)(2), and (a)(3); 1386(b)(7); 1395 and California Code of Regulations, title 28, section 1300.67.4(a)(3)(A).

1 **THEREFORE**, pursuant to Health and Safety Code section 1391 of the Knox-Keene
2 Act:

3 **IT IS HEREBY ORDERED:**

4 1. That Respondent, and any of its directors, officers, trustees, managers,
5 affiliates, agents, and all persons participating with them or acting in concert with them, shall
6 immediately **CEASE AND DESIST FROM:**

- 7 a. Operating in California without a Knox-Keene Act license;
8 b. Promoting any further deceptive or misleading advertisements or
9 solicitations to California residents;
10 c. Conducting any enrollment activities in California for health care
11 memberships, including, but not limited to, medical, dental,
12 hospitalization, and pharmacy;
13 d. Taking, receiving, or forwarding any application for health care
14 memberships from California residents; and
15 e. Collecting or receiving, in full or in part, any payments for health-care
16 memberships from or on behalf of California residents.

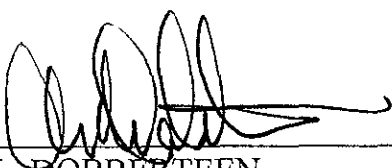
17 2. Respondent shall disclose conspicuously in any advertisement or solicitation
18 that may reasonably be viewed by residents of the State of California; including, but not
19 limited to, any Internet web page or advertisement that their health care membership product
20 is not available in the State of California.

21 3. Respondent shall refund all monies to demanding members without undue
22 delay.

23 Dated: July 15, 2005

LUCINDA EHNES, Director
Department of Managed Health Care

24
25
26 By:



AMY L. DOBBERTEN
Assistant Deputy Director
Department of Managed Health Care